

## Competition challenges on digital markets – Position paper

### Key messages

Schibsted is an international media group with world-class Scandinavian media houses, leading international marketplaces and tech start-ups in the field of personal finance and collaborative economies. Millions of people interact with Schibsted companies every day, and our digital services aim to empower consumers.

A well-functioning digital economy and a fair competitive environment online are key elements in the development of the Digital Single Market. We are of the opinion that there is a need to further develop EU competition policy in order to combat anti-competitive practises and allow digital companies to compete on the merits. Intensified merger control of acquisitions by leading platforms is required to reduce killer acquisitions and scrutinize market power based on data access.

Moreover, we believe that there is a need to introduce platform regulation to supplement competition law enforcement. In order to strengthen scrutiny of the market the EU should consider creating a European Digital Authority to better monitor and regulate digital platforms with extensive market power. Such platforms should be prevented from unilaterally dictating business terms and artificially restricting third parties' ability to collect data about their own end users and services.

### **1. Digital platforms' market power**

The current era of digitalisation has led to the emergence of a handful of firms with substantial market power in an increasing number of markets, including search, digital advertising, ad-tech, social media, messaging, and many others. Due to the combination of strong network effects, the importance of data, products and services being offered to end users as “freemium” models and frequent acquisitions of potential rivals and small start-ups by dominant platforms, it has become extremely difficult for innovative entrants and existing competitors alike to challenge these near-monopolies. **The ability of digital incumbents such as Google, Apple and Facebook to dominate the internet service sectors in which they operate few has led to a series of adverse consequences**, which decision-makers should assess to ensure that all digital players are able to compete on the merits in a level-playing field.

**The growth strategy of the so-called GAFAs appears to be clear: they want to be everywhere online.** And they are using their powerful datasets, analytics and most importantly their deep pockets to reach this goal. In the past years, these platforms have either leveraged their dominance to enter new markets or acquired promising rivals to entrench their control of the digital world. Examples include Google's launch of Shopping and Jobs, which merely copied existing services without bringing any innovation, or Facebook's launch of Marketplace and buyout of Instagram and WhatsApp. While copying existing business models to enter new markets

or acquiring rivals is not illegal *per se*, it becomes strongly anti-competitive when performed by such powerful dominant players - often in combination with self-preferencing strategies. The consequence is simple: consumers are aggressively nudged into using GAFA-developed services in a way that restricts freedom of choice, while competitors are being foreclosed from several digital markets.

*Our position:*

- ❑ **Ex ante platform regulation:** While competition law plays a crucial role, it cannot resolve all the issues at stake. It is therefore essential to deal with platform-related problems from different angles. We need platform regulation to supplement competition law enforcement. Regulation should aim at tackling harmful self-preferencing and to allow platform users (both B2B and B2C) to select their preferred products and services to facilitate competition on the merits. The recently adopted P2B Regulation does not solve the challenges.
- ❑ **Ex post enforcement:** Continued and vigilant intervention from competition authorities in clear cases of foreclosure and self-preferencing is crucial. More sophisticated theories of harm, as well as guidance from competition authorities, is necessary to tackle the challenges on digitale markets.
- ❑ The EU should consider creating a **European Digital Authority** to better monitor and regulate digital platforms with extensive market power. Such an authority could be tasked with overseeing inter alia data practises, platforms' role as unavoidable trading partners/gatekeepers and their ability to unilaterally dictate interoperability and terms of business. Moreover, the various proposed partnership models for interaction between platforms and other digital companies should be scrutinized closely, as these ultimately often aim at disintermediating other digital companies from their own users and reduce their ability to collect data.

## 2. Data-specific challenges

**Data is the key input that fuels the platform economy.** Platforms extract large and unique datasets from the interaction between producers/service providers and end users. This attracts a third group, namely advertisers, which allows platforms to monetise through online advertising.

**Yet certain platforms are engaging in various practices that seek to deprive the business users they engage with of data concerning their own end users and services.** Service providers increasingly face restrictions on access to their own data as well walled gardens in commercial relationships. This raises barriers to entry, entrenches platforms' market power, and ultimately deprive consumers from the ability to engage directly with the service providers from which they buy services.

Data pooling is potentially an effective tool for smaller digital companies to build competitive strength vis-a-vis large tech platforms, and to avoid data silos, anti-competitive network effects and market tipping. However, there is a need to clarify when data pooling is considered legal and pro-competitive and when it is not.

*Our position:*

- ❑ **Data practises by leading digital platforms must be proactively monitored and investigated.**

- ❑ **Platforms should be prevented from artificially restricting third parties' ability to collect data about their users** and the use of their services. It is necessary to protect providers of digital services' right to receive data generated by or through their services for the purpose of assisting their customers, enable personalised services and otherwise develop their services.
- ❑ Regulation or Guidelines on data-specific matters, such as data pooling, portability and interoperability, as well as access to data, is necessary. Such guidelines should both address competition law and other areas of law, such as privacy and intellectual property law.

### **3. Specific challenges for news media organisations**

**News media organisations face a fundamental imbalance in the vertical and horizontal relationships with digital platforms**, partly because the latter act as both suppliers and competitors. At vertical level, platforms distribute content and offer a wide range of technological solutions which they control. However, publishers have very little bargaining power towards the platforms, and the latter manages to extract an unfair share of the value created from the relationship.

At the same time, at horizontal level, platforms compete with publishers for advertising revenue. Yet strong network effects have led to a *de facto* duopoly in advertising between Google and Facebook, which is strengthened by these platforms' control over data. Moreover, platforms seek to divert user attention for news content away from publishers' websites and to their platforms, with the consequences known for "filter bubbles" and echo chambers. Ultimately, news media companies both lose revenue and the ability to create a strong relationship with its customers, which is necessary to provide the best customer experience that users could expect.

*Our position:*

- ❑ **News publishers should be given collective bargaining rights** to counter platform dominance and allow for a more balanced bargaining position. This could take the form of competition guidelines for the digital advertising sector, that could for instance allow joint initiative in choosing technological solutions or joint marketing and sales of advertising products.
- ❑ **Competition authorities should push for** increased transparency on terms and fees within the level of online ad intermediation and other services within the ad tech ecosystems. Increased transparency will again lead to increased competition.

### **4. Challenges in antitrust enforcement**

The digitization of markets requires adaptation of some of the antitrust rules and mechanisms. **Excessive caution by enforcers may motivate abusive behaviour, as digital platforms see greater benefits than cost in engaging in anti-competitive behaviour.** Indeed, digital markets are fast moving, but enforcement can sometimes be so slow that competition is wiped out before a decision can be made. Following an investigation it is furthermore crucial that imposed remedies are sufficient to restore competition and effectively bring the infringement to an end. Digital markets call for a more sophisticated approach towards remedies, including full use of the existing tool box.

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## *Our position:*

- ❑ It is crucial to **speed up time of investigation and see faster outcomes.**
- ❑ **Interim measures** should be imposed when there is a risk of the market tipping while cases are pending.
- ❑ **Competition authorities should have greater power to impose well-specified remedies to effectively end an abuse** - experience from the Google Shopping case has shown that freedom on the hands of digital platforms with extensive market power to shape the compliance mechanism is problematic.
- ❑ **When platforms both control access to their own products as well as third-party products, enforcers should consider ambitious remedies, such as structural or functional separation.** Only such remedies will remove platforms' incentives to discriminate or leverage their market power.
- ❑ In cases where abusive behaviour has significantly benefited a major digital platform in improving its market position vis-à-vis competitors, the authorities should impose **restorative remedies to enable formerly disadvantaged competitors to regain strength.**
- ❑ **Merger control should be intensified for dominant platforms** to scrutinize increased market power due to increase data access and to reduce killer acquisition of potential rivals. The EU Commission or a future European Digital Authority should have the powers to impose extensive notification protocols upon firms with significant market power and test every acquisition by such companies.
- ❑ **Competition law and practise in the field of predatory innovations and exploitative practices needs to be strengthened.** Exploitative abuse cases were historically rare, but the ability of digital platforms to systematically impose adverse trading conditions on trading partners calls for action.